

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BYRON L PETERS,

Plaintiff,

v.

WILLIAM HANES MONROE JR, KIP
ANDREW HARBISON, MARK
CHRISTIAN GRECO, THE LAW
OFFICE OF GLASSER AND
GLASSER PLC,

Defendants.

CASE NO. C20-1422 MJP

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

This matter comes before the Court on Defendants' Motion to Dismiss. (Dkt. No. 24.)
Having reviewed the Motion, Plaintiff's Opposition (Dkt. No. 35), the Reply (Dkt. No. 38), and
all supporting materials, the Court GRANTS the Motion and DISMISSES this action.

BACKGROUND

Plaintiff Byron Peters, acting pro se, brings breach of fiduciary duty and fraud claims
against the attorneys who handled the settlements of his deceased grandfather's asbestos-related
wrongful death claims. The attorneys are defendants William Monroe, Jr., Kip Harbison, and

1 Mark Greco, (Complaint (Dkt. No. 5)), though Peters has dismissed his claims against
2 Defendants' firm, Glasser & Glasser P.L.C. (Dkt. No. 29). Defendants move to dismiss Peters'
3 Complaint for: (1) lack of personal jurisdiction; (2) improper venue; (3) insufficient service of
4 service; and (4) failure to state a claim. The Court reviews the relevant allegations.

5 In May 2018, Peters learned that he was a statutory beneficiary to his deceased
6 grandfather's estate. (Compl. at 7-8.) His aunt informed him that lawyers for the estate in
7 Virginia (Defendants) would be sending him documents to sign so that they could "process the
8 negotiated wrongful death settlement payments to the statutory beneficiaries." (*Id.* at 8-9.) The
9 paperwork Peters received included a proposed agreement between the statutory beneficiaries to
10 the estate, that would split the net settlement and grant Defendants' law firm a limited power of
11 attorney. (Ex. 1 to Complaint.)

12 Peters initially refused to sign the paperwork and sought to challenge the settlements with
13 Defendants' assistance. (Compl. at 9.) Harbison refused to assist, informing Peters that only the
14 Administrator of his grandfather's estate had standing to challenge the settlements. (*Id.* at 11.)
15 Peters also demanded an accounting of the settlements, but Harbison refused, noting that he
16 represented only the estate, not the beneficiaries. (*Id.* at 11-12.) But he did inform Peters that he
17 could retain his own counsel to investigate the issue. (*Id.*) Peters alleges that Harbison
18 "intentionally deceived and confused" him on these issues to convince him to sign a statutory
19 beneficiary agreement to obtain his beneficiary interest to three settlements. Ultimately Peters
20 signed the statutory beneficiary agreement, but claims he did so under duress. (Ex. 1 to Compl.
21 (Dkt. No. 5 at 5-1 at 1).)

22 Peters claims that Defendants actually settled the estate's claims for more money and
23 fraudulently diverted funds to themselves through a widespread scheme including Virginia court
24

judges and staff. Peters filed a complaint against Defendants with the Virginia Bar Association, but it was dismissed. He then filed his Complaint in this District against Defendants, all of whom are residents of Virginia.

Defendants provide declarations attesting to their lack of contacts to Washington and this District. All three Defendants aver they own no property in Washington, have no bank accounts in Washington, solicit no clients in Washington, represent no Washingtonians, and possesses no professional licenses in Washington. (Declaration of Kip Harbison ¶¶ 13-14; Declaration of William Monroe, Jr. ¶¶ 10-11; Declaration of Marc Greco ¶¶ 6-7.) Greco states that he has taken six business trips to Washington over the last twenty years, and Monroe has not been in the state for the last ten years. (Greco Decl. ¶ 7; Monroe Decl. ¶ 11.)

ANALYSIS

A. Lack of Personal Jurisdiction

The Court agrees with Defendants that it cannot exercise personal jurisdiction over them.

1. Legal Standard

In opposing a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper. Boshcetto v. Hansing, 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, Defendants' motion is based on written materials rather than an evidentiary hearing, "the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1127 (9th Cir. 2010) (internal quotation marks omitted). And while the plaintiff cannot "simply rest on the bare allegations of its complaint," the uncontroverted allegations in the complaint must be taken as true. See Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004) (quotation and citation omitted). If the allegations are contested, the Court "may not

1 assume the truth of allegations in a pleading which are contradicted by affidavit.” CollegeSource,
 2 Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1073 (9th Cir. 2011) (quotation and citation omitted).
 3 But the Court resolves factual disputes in the plaintiff’s favor. Pebble Beach Co. v. Caddy, 453
 4 F.3d 1151, 1154 (9th Cir. 2006).

5 Whether there is personal jurisdiction over Defendants begins with an assessment of
 6 Washington’s “long-arm” statute of Washington. Glencore Grain Rotterdam B.V. v. Shivnath
 7 Rai Harnarain Co., 284 F.3d 1114, 1123 (9th Cir. 2002). Washington’s long-arm statute, RCW
 8 4.28.185, reaches as far as the due process clause will allow. Shute v. Carnival Cruise Lines, 113
 9 Wn.2d 763, 767 (1989). To conform to due process, the plaintiff must show that the Court has
 10 either general or specific jurisdiction.

11 General jurisdiction flows from a non-resident defendant’s continuous, systematic
 12 business contacts with Washington, not necessarily the acts alleged in the complaint. See
 13 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984). Specific
 14 jurisdiction arises out of the defendant’s forum-related activities provided the defendant has had
 15 “fair warning” that its activities in Washington may subject it to the jurisdiction of courts in this
 16 forum. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); Helicopteros, 466 U.S.
 17 at 414 n.8. Specific jurisdiction comports with due process if the defendants have “minimum
 18 contacts [with Washington] such that jurisdiction does not offend traditional notions of fair play
 19 and substantial justice.” Pebble Beach, 453 F.3d at 1155 (quoting Int’l Shoe Co. v. Washington,
 20 326 U.S. 310, 315 (1945)). The Court conducts a three-part inquiry to determine whether
 21 “minimum contacts” with the forum exist to warrant the court’s exercise of specific jurisdiction:

- 22 (1) the defendant must either “purposefully direct his activities” toward the forum or
 “purposefully avail[] himself of the privileges of conducting activities in the forum”;
- 23 (2) “the claim must be one which arises out of or relates to the defendant's forum-related
 24 activities”; and

1 (3) “the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it
2 must be reasonable.”

3 AMA Multimedia, LLC v. Wanat, 970 F.3d 1201, 1208 (9th Cir. 2020) (quoting Axiom Foods,
4 Inc. v. Acerchem Int’l, Inc., 874 F.3d 1064,1068 (9th Cir. 2017)). Because Peters alleges tort-
5 based claims, the Court employs a “purposeful direction” analysis to assess the “minimum
6 contacts” inquiry. Id. at 1208.

7 Given the allegations Peters makes about “tortious conduct [that] takes place outside the
8 forum and has effects inside the forum,” the Court “examine[s] purposeful direction using an
9 ‘effects test’ based on Calder v. Jones, 465 U.S. 783 (1984).” AMA, 970 F.3d at 1208. Under
10 this test, “the defendant[s] allegedly must have (1) committed an intentional act, (2) expressly
11 aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the
12 forum state.” Id. at 1209 (quotation omitted). As the Supreme Court has cautioned, “[t]he
13 relationship must arise out of contacts that the defendant himself creates with the forum State,”
14 which “must create a substantial connection with the forum State.” Walden v. Fiore, 571 U.S.
15 277, 284 (2014). “Due process requires that a defendant be haled into court in a forum State
16 based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’
17 contacts he makes by interacting with other persons affiliated with the State.” Id. at 286.

18 **2. No General or Specific Jurisdiction**

19 Based on the Court’s review of the Complaint and materials Defendants submitted, the
20 Court finds a lack of general and specific jurisdiction.

21 As to general jurisdiction, Peters provides no argument or allegations that Defendants
22 have systematic or continuous contacts with Washington. Defendants’ declarations demonstrate
23 their contacts with Washington are neither systematic nor continuous. Harbison has never visited
24 Washington and his only relevant contacts are through the letters he has exchanged with Peters,

1 including the agreement authorizing Peters to receive benefits. Greco has visited Washington six
2 times in the last twenty years, while Monroe has not been in the state for the last ten years.
3 (Greco Decl. ¶ 7; Monroe Decl. ¶ 11.) All three Defendants aver they own no property in
4 Washington, have no bank accounts in Washington, solicit no clients in Washington, represent
5 no Washingtonians, and possesses no professional licenses in Washington. (Harbison Decl. ¶¶
6 13-14; Monroe Decl. ¶¶ 10-11; Greco Decl. ¶¶ 6-7.) The Court finds no general jurisdiction.

7 As to specific jurisdiction, the Court finds an absence of “minimum contacts” with
8 Washington. Applying the “effects test,” the Court finds no purposeful direction aimed at
9 Washington. See AMA, 970 F.3d at 1208. Peters makes no allegation that Greco or Monroe
10 directed or conducted any act towards him in Washington. The only act that Peters identifies as
11 directed at Washington was Harbison’s letters and the agreement he mailed to Peters in
12 Washington. These transmissions were not expressly aimed at the forum state generally, just to
13 Peters as the recipient who happens to live in this State. This does not show purposeful direction
14 because, as the Supreme Court has stated, “a defendant’s relationship with a plaintiff or third
15 party, standing alone, is an insufficient basis for jurisdiction.” Walden, 571 U.S. at 286. Instead,
16 Harbison’s contacts with Washington are “based on the ‘random, fortuitous, or attenuated’
17 contacts” he made by sending correspondence to Peters who happens to reside in Washington.
18 Id. at 286. This does not show purposeful direction. The Court also notes that the other conduct
19 about which Peters complains all appears to have occurred outside of this State, which does not
20 justify finding personal jurisdiction over Defendants in this forum. The Court therefore finds it
21 improper to exercise personal jurisdiction over Defendants in the absence of “minimum
22 contacts.” The Court GRANTS Defendants’ Motion and DISMISSES the claims against
23 Defendants for lack of personal jurisdiction.
24

CONCLUSION

Based on the Court's review of the pleadings and the materials Defendants provided, it concludes that it cannot properly exercise personal jurisdiction over any of the Defendants. The Court therefore GRANTS Defendants' Motion and DISMISSES this action. The Court does not reach any of the other issues Defendants raised because doing so was unnecessary to resolve the Motion.

The clerk is ordered to provide copies of this order to Plaintiff and all counsel.

Dated March 22, 2021.



Marsha J. Pechman
United States District Judge